

Respondent argues that claimant's injuries did not arise out of and in the course of her employment because the injuries were intentionally caused by a coworker as a result of a purely personal dispute not related to work duties or conditions. Claimant's counsel suggests the dispute arose approximately two weeks earlier when claimant reported the coworker for leaving an entire bin of defective parts. Testimony provided at the Preliminary Hearing leaves unclear the reason the coworker struck claimant. The two had broken off a personal relationship some several months earlier. The Appeals Board does not consider it necessary at this point, however, to determine the reason the coworker struck claimant, because the evidence establishes that claimant's subsequent work aggravated

and worsened the original injury. The subsequent aggravation appears to be a compensable injury which caused claimant to be taken off work and to need additional medical treatment. For that reason the Order for preliminary benefits is affirmed.

The request by claimant's counsel for an award of attorney fees in connection with this appeal is denied. The Appeals Board also notes parenthetically that the witness's affidavit submitted with the brief of claimant's counsel has not been considered by the Appeals Board as it was not part of the record submitted to the Special Administrative Law Judge.

Wherefore, the preliminary hearing Order of Special Administrative Law Judge Leroy C. Rose dated September 29, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c:

Kent Roth, Great Bend, KS
Jerry M. Ward, Great Bend, KS
Leroy C. Rose, Special Administrative Law Judge
Philip S. Harness, Director